86-183

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

SULAIMAN S. ABALKHAIL, Petitioner

v.

CLAREMONT UNIVERSITY CENTER, CLAREMONT GRADUATE SCHOOL AND THE BOARD OF FELLOWS OF CLAREMONT UNIVERSITY CENTER

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

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15pp

QUESTIONS PRESENTED:

Whether the conferral of an advanced academic degree constitutes a property interest under the 14th Amendment such that its subsequent revocation requires prior notice of names of adverse witnesses and an impartial hearing wherein an opportunity to confront and cross-examine adverse witnesses is afforded.

SULAIMAN S. ABALKHAIL, Petitioner

v.

CLAREMONT UNIVERSITY CENTER, CLAREMONT GRADUATE SCHOOL AND THE BOARD OF FELLOWS OF CLAREMONT UNIVERSITY CENTER

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA, To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

SULAIMAN ABALKHAIL, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of California, entered in the above-entitled case on May 7, 1986.

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OPINIONS BELOW:

The California Supreme Court's Order denying review is printed in Appendix "A" hereto, infra, page A-1. The opinion of the Court of Appeal of the State of California, Second Appellate District, Division I, is unreported and is printed in Appendix "A" hereto, infra, page A-2. The Notice of Filing of Order of Dismissal is printed in Appendix "A" hereto, infra, page A-40.

JURISDICTION:

The judgment of the Supreme Court of the State of California was entered on May 7, 1986. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. §1257(3), because a title, right, privilege, or immunity was claimed under the Constitution of the United States, which claim was denied by the Supreme Court of California.

CONSTITUTIONAL PROVISIONS INVOLVED:

This case involves the First Section of the Fourteenth Amendment to the Constitution of the United States, which provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty or property, without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF FACTS

In August of 1977, Petitioner SULAIMAN S. ABALKHAIL, was accepted into CLAREMONT GRADUATE SCHOOL, after which ABALKHAIL worked toward receiving a Master's Degree and a Doctor of Philosophy Degree in Government. MR. ABALKHAIL enrolled in and completed all courses that were required by Respondents, CLAREMONT GRADUATE SCHOOL. He received exceptional grades for his efforts.

Petitioner ABALKHAIL satisfactorily completed a dissertation entitled "Public Enterprise and Development in Kuwait", a portion of which was based on a research and writing project Appellant completed while he worked for the Arab Planning Institute as a research assistant. As a result of Petitioner's satisfactory completion of his dissertation, in 1979 SULAIMAN S. ABALKHAIL received a Degree of Doctor of

Philosophy of Government from Respondent CLAREMONT GRADUATE SCHOOL.

On April 12, 1980, ABDULLA M. ALI, a Kuwaitee who was director of the Arab Planning Institute for which SULAIMAN S. ABALKHAIL had completed the aforementioned project, sent a letter to the President of CLAREMONT GRADUATE SCHOOL alleging that Petitioner's dissertation was plagiarized from a work done by DR. MOHAMMED T. SADIK entitled "Public Enterprises and Development in Arab Countries."

On April 21, 1980, MR. ALI sent a similar letter to MR. ABDUL LATIFF Y. HAMAD, who was at that time Finance Minister of Kuwait and a Member of the Board of Fellows of CLAREMONT GRADUATE COLLEGE. MR. AL HAMAD then forwarded that letter to CLAREMONT on April 22, 1980.

In response, CLAREMONT GRADUATE SCHOOL appointed a subcommittee,

consisting of three members of the faculty, to investigate the charges brought against MR. ABALKHAIL by MR. ALI. That subcommittee determined that some of the work by Petitioner ABALKHAIL may have been plagiarized. On December 16, 1981, PAUL A. ALBRECHT, Dean and President of CLAREMONT GRADUATE SCHOOL, informed Petitioner ABALKHAIL by letter that a hearing would be conducted to determine whether or not there had been a breach of academic honesty.

Respondents' bylaws contained in the school catalog state in part:

> . . . Misconduct for which a student shall be subject to discipline shall include all forms of cheating, such as plagiarism, forgery and a student's significant use of materials, whether or not published, prepared by someone else, without appropriately crediting the source. Following the use of the procedures which afford the student **safeguards appropriate to the nature of the alleged violations and the potential penalty,** disciplinary

> sanctions may range from a warning to the student to separation from CLAREMONT GRADUATE SCHOOL. **A description of such procedure shall be available in the office of the Dean of Students.** (emphasis added)

Since here the potential penalty was the revocation of MR. ABALKHAIL'S degree, which is a significant property interest, Petitioner SULAIMAN S. ABALKHAIL anticipated that he would be given the full protections of procedural due process provided by the Fourteenth Amendment to the United States Constitution.

As admitted by Respondent and found by the Court below at page 3 of its opinion, "No similar situation previously had arisen or been foreseen in the experience of CLAREMONT GRADUATE SCHOOL. Consequently, the Graduate School did not maintain a standing committee or rules and regulations for the investigation and determination of charges brought against

its degree holders who might merit disciplinary action."

On May 5 and 6, 1981, the same investigative subcommittee which had initially determined that plagiarism had possibly occurred, conducted a formal hearing whereat Petitioner ABALKHAIL was given the opportunity to explain and refute the allegations made by MR. ALI concerning the similarities between MR. SADIK's work and the dissertation completed by Petitioner ABALKHAIL. MR. ALI was not present at the hearings.

During this hearing, MR. ABALKHAIL explained that MR. SADIK's work was based on an amalgamation of research done by three or four different research assistants, including himself. His and the other student names were not included in SADIK's final draft as being given credit for their work. MR. ABALKHAIL had expected to receive some credit for his

contribution to MR. SADIK's work and that his dissertation was based partly on his contribution.

MR. ABALKHAIL also contended at the hearing that political jealousies and religious differences between himself and MR. ALI caused MR. ALI to attempt to discredit Petitioner's work.

After the hearings, and upon the request of the reviewing committee and before a formal decision was made, MR. DIAMOND, counsel for CLAREMONT UNIVERSITY contacted MR. ALI on May 12, 1981, to discuss with him MR. ABALKHAIL's testimony.

MR. ALI responded to MR. DIAMOND's request by two telexes dated May 30, 1981 and February 1, 1982, which contradicted MR. ABALKHAIL's testimony. ALI also informed MR. DIAMOND that he would be in Los Angeles in February, 1982, and would be available if the reviewing

committee wished to interview him. The committee decided to meet with MR. ALI alone, outside of MR. ABALKHAIL's presence, to entertain ALI's further criticism of MR. ABALKHAIL's dissertation and prior testimony.

The committee also received a letter allegedly from MR. SADIK that flatly denied that MR. ABALKHAIL ever worked for MR. SADIK or had been involved in any research leading to his publication of "Public Enterprises and Development in Arab Countries".

MR. ABALKHAIL received only a summary of MR. ALI's and MR. SADIK's allegations and communications; but was asked to reply to them by telex. MR. ABALKHAIL instead requested that he be allowed to be present when ALI and SADIK testified before the committee in order to confront these witnesses against him and impeach their testimony as being caused by

political jealousies and religious differences. The committee, however, refused Petitioner's request.

On September 30, 1982, the reviewing committee submitted its report to members of the graduate counsel. That report concluded that the plagiarism charges against MR. ABALKHAIL were substantiated and recommended that his Degree of Philosophy of Government be revoked. MR. ABALKHAIL was not given the opportunity to reinstate his degree. MR. ABALKHAIL's degree was revoked in October of 1982, but he was not informed of this decision until February 1, 1983.

RULINGS BELOW:

Petitioner filed a complaint in Los Angeles County Superior Court seeking, inter alia, a writ of mandate for reinstatement of his degree of doctor of philosophy of government. Petitioner contended therein that the hearing he

received violated the requirements of procedural due process under the Fourteenth Amendment to the United States Constitution. The writ of mandate was denied on the grounds that "it is very apparent that the petitioner received a fair hearing". (Reporter's Transcript of Proceedings, December 19, 1984 at page 8.)

In his appeal to the Court of Appeal of the State of California, Second Appellate District, Petitioner argued that the hearing procedures violated the due process clause of the Fourteenth Amendment in that he did not receive adequate notice of the charges against him, as said notice did not state the names of his accusers, and that he was denied a fair hearing in that he was given no opportunity to confront and cross-examine his accusers. The Court of Appeal for the Second District held that while Petitioner's

degree was a vital property interest under Dixon v. Alabama State of Board of Education, 294 F.2d 150 (1961) and therefore Petitioner was entitled to procedural fairness, he was not entitled to "full blown" procedural due process, but rather only to the common law minimal due process requisites. The Court held that such common law requisites do not include notice of the names of Petitioner's accusers prior to the hearing, nor the right of confrontation and cross-examination.

In his Petition for Review to the Supreme Court of the State of California, Petitioner again asserted that the hearing violated the procedural due process requirements of the Fourteenth Amendment in that he did not receive adequate notice of the charges against him, particularly, he was not given the names of his accusers prior to the hearing; and that he did not

receive a fair hearing, in that he was not given an opportunity to confront and cross-examine adverse witnesses. The California Supreme Court denied Petitioner's Petition for Review without ruling upon any of the issues raised therein.

REASONS FOR GRANTING THE WRIT:

Since the Petition to the California Supreme Court was summarily denied, the reasoning which governs the case at bar is that of the opinion by the Court of Appeal.

The Court of Appeal found that, under Dixon, Petitioner had a significant property interest in his degree, which entitled him to due process protection. Dixon was decided upon federal constitutional principles; therefore, the Court of Appeal here should have applied said principles, but it did not. Instead, the Court relied upon common law due

process principles to decide Petitioner's federal constitutional claims. Specifically, the Court erred in holding that Petitioner was entitled only to minimum due process which does not include the right to notice of the names of the adverse witnesses prior to hearing nor the right to confront and cross-examine adverse witnesses.

The Fourteenth Amendment right to notice and hearing is so fundamental to our society that it may not be denied by a private association unless a clear and explicit waiver has been obtained. Dixon, 294 F.2d at 156-157. No waiver was obtained here. Rather, CLAREMONT explicitly requires in its own bylaws, the use of procedures which afford the student safeguards appropriate to the nature of the alleged violations and the potential penalty.

DUE PROCESS RIGHT OF ADEQUATE NOTICE:

The Court of Appeal relied upon Dixon v. Alabama State Board of Education, supra, in determining that MR. ABALKHAIL received adequate notice. The Court below stated that adequate notice of the charges need only include the specific accusation made and a statement of the consequences which may follow, if the charges are substantiated. The Court of Appeals' application of the Dixon holding did not adequately address the factual differences between the instant case and Dixon.

The Dixon case dealt with students who were expelled from Alabama State College due to illegal conduct in violation of school policy. That conduct consisted of black students attempting to enter and obtain service at an all-white lunch counter. Although the Dixon Court held that the right to **receive** an education is a significant interest,

(Dixon, supra, at page 157), the facts of that case differ significantly with the facts presented here.

Unlike the students in Dixon, here MR. ABALKHAIL had **received** his degree. His fundamental interest had vested at the time the degree was conferrred. This case differs considerably from Dixon, where no vested property interest was involved since the students' expulsion had occurred before any degrees were awarded. As such, the students in Dixon need be afforded fewer procedural safeguards than Petitioner herein.

The Court of Appeals' failure to address the issues set forth above resulted in a rigid mechanical application of the Dixon guidelines. While such minimum standard may be sufficient under common law principles, the federal due process doctrine clearly calls for a more

flexible approach. As the Court stated in Goss v. Lopez, 419 U.S. 565 (1975):

> [T]he timing and content of the notice and the nature of the hearing will depend on appropriate accomodation of the competing interest involved. 419 U.S. at 579.

Indeed, the Dixon Court did not attempt to establish a rigid due process standard to be applied in all cases regardless of factual distinctions. Rather, as the Court stated in Dixon:

> The minimum procedural requirements necessary to satisfy due process depend upon the circumstances and the interests of the parties involved. 294 F.2d at 155.

When, as here, a vested fundamental interest is threatened, the protections afforded the accused should be notice calculated to inform the accused of the specific charges against him and the names of those who have accused him of the charges, so as to allow him to prepare his defense with knowledge of all the

available information, and so as to negate surprise at the time of hearing.

In the instant case, charges of plagiarism were brought to MR. ABALKHAIL's attention by letter dated December 16, 1981. Absent from this notice were the names of those who had accused MR. ABALKHAIL of the alleged plagiarism or the names of known prospective witnesses to the incident upon which the complaint was allegedly based. These witnesses, ABDULLA M. ALI, ABDLATIF AL-HAMAD and MUHAMMAD T. SADIK were the very individuals whose testimony and correspondence later persuaded the committee that Petitioner had committed plagiarism. Because MR. ABALKHAIL did not have knowledge of his accusers or the witnesses against him, he was unable to investigate the facts, evaluate the credibility of, or discuss the matters with, his accusers or other witnesses prior to the hearing. In other

words, if MR. ABALKHAIL had been able to more fully explain the facts underlying, or the reasons for, the accusations asserted against him, the Board may not have revoked MR. ABALKHAIL's degree.

Therefore, the Dixon court's suggestion on what constitutes minimal notice is not appropriate where, as here, a vested interest is involved and the end result of the proceeding is the taking away of that vested significant interest. In such instances, the notice afforded should be something more than the minimum suggested by the Dixon court.

DUE PROCESS RIGHT OF CROSS-EXAMINATION AND CONFRONTATION:

The Court of Appeal relied upon Anton v. San Antonio Community Hospital, 19 Cal.3d 802 (1977) and Miller v. National Medical Hospital, 124 Cal.App.3d 81 (1981) as authority that Petitioner was

not entitled to confront and cross-examine adverse witnesses at the hearing. Both decisions, however, turn exclusively upon common law due process principles. In Anton, the California Supreme Court held, inter alia, that the hospital staff suspension hearing was "conducted in a manner consistent with the **minimal requisite of fair procedure demanded by established common law principles.**" 19 Cal.3d at 802. Similarly, in Miller, the Court stated:

> "It is now well established 'that membership decisions of hospital staff associations, whether in public or private hospitals, must be rendered pursuant to **minimal requisites of fair procedure required by established common law principles.**' 124 Cal.App.3d at 90 (citations omitted).

The Court of Appeal did not rule that the common law principles it applied were comparable to federal constitutional principles; indeed it never addressed that issue. Petitioner contends that where he

asserts a federal constitutional claim, he is entitled to have that claim decided upon federal constitutional principles and not upon a common law standard, unless the Court specifically finds that such common law standard is comparable. Petitioner further contends that the common law standard applied here is not comparable to federal constitutional principles and, hence, was applied erroneously.

It is well established under federal constitutional standards that "[d]ue process is flexible and calls for such procedural protections as the particular situation demands." Mathews v. Eldridge, 424 U.S. 319, 334 (1976); Dixon v. Alabama State Board of Education, 294 F.2d 150, 155 (1961). The issue of what process is due, under the Fourteenth Amendment, when a graduate degree is subsequently revoked, was squarely decided in Crook v. Baker, 584 F.Supp.1531

(1984).

The circumstances considered by the Court in Crook are remarkably similar to the circumstances of the instant case. Plaintiff in Crook had received a masters degree in geology and mineralogy. Two years later, the University which conferred plaintiff's degree, informed plaintiff that he was charged with fraudulent submission of his thesis, in that the data therein was fabricated and plagiarized. 584 F.Supp. at 1539, 1545. Subsequently, the University held a hearing at which plaintiff was present but was not permitted to cross-examine adverse witnesses. Plaintiff was asked to respond at the hearing to various unverfied letters submitted in evidence from absent witnesses. 584 F.Supp. at 1546. Subsequent to the hearing, the University continued its investigations, during which

it considered ex parte evidence. 584 F.Supp. at 1548. Plaintiff's master of science degree was revoked one year later.

The Court in Crook held that the Fourteenth Amendment requires, inter alia, the right to cross-examine adversee witnesses at a hearing revoking a graduate degree. The Court found the right to cross-examine adverse witnesses particularly important because Plaintiff "flatly disputed the complex facts underlying the charges made against him," and determined further that:

> In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. 584 F.Supp. at 1560, quoting Goldberg v. Kelly, 397 U.S. 254, 269 (1970).

Applying the correct federal due process test enunciated in Mathews v. Eldridge, 424 U.S. 319, 334 (1976), the Crook Court determined that the risk of

eroneous deprivation of a graduate degree, described as an interest "of great significance," outweighed the adminstrative burden of additional procedures including, inter alia, the right of cross-examination. 584 F.Supp. at 1557. The context of revocation of an already conferred graduate degree is sufficiently distinct from "other more frequently occurring contexts" to require additional procedural safeguards. 584 F.Supp. at 1557.

Petitioner contends that the instant case should be controlled by the analysis in Crook v. Baker, and that such analysis clearly contradicts the reliance of the Court below upon common law due process principals. The Crook Court's emphasis on the necessity of cross-examination to protect the integrity of the fact-finding process is of equal urgency in the circumstances of the

instant case.

The charge against Petitioner was plagiarism. Not only was the accusation made by persons residing outside the United States, but the relevant events had also taken place outside the United States. Petitioner contended at the hearing that the document which he had proportedly plagiarized was actually written by himself during his previous employment in Kuwait, and that the document was subsequently published in Kuwait without proper acknowledgement.

The investigative committee received into evidence unverified letters which denied the facts of Petitioner's employment and authorship. As both events took place in Kuwait, and hence far beyond the committee's ability to independently investigate, the competency and credibility of the evidence assumed here a critical degree of importance. Petitioner

has contended throughout the process that the letters received in evidence against him were incompetent and without proper legal foundation and, in fact, motivated by improper political and religious reasons. Had petitioner been permitted to confront and cross-examine the witness ALI, he would have had an opportunity to so impeach ALI's credibility.

As the Court stated in Mathews:

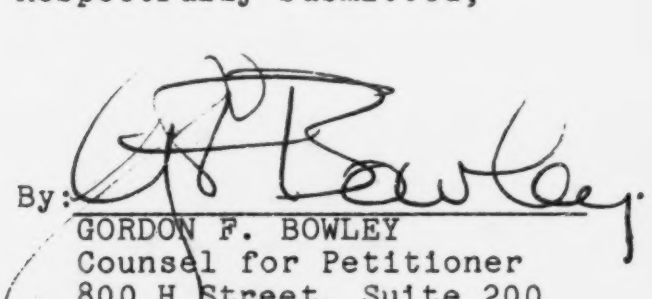
> The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. 424 U.S. at 333.

The common law minimum due process standard applied by the Court of Appeal below is clearly inadequate under the federal constitutional requirement that the hearing be held in a meaningful manner, which includes the right of cross-examination in the context of revocation of an academic degree.

CONCLUSION:

For the foregoing reasons, this writ should be granted.

Respectfully submitted,

By: 

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[SUPREME COURT
FILED
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Deputy]

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 1, No. B014012

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

IN BANK

ABALKHAIL

v.

CLAREMONT UNIVERSITY CENTER et al.

Appellant's petition for review is DENIED.

BROUSSARD
Acting Chief Justice

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

SULAIMAN S. ABALKHAIL	)	2d Civ. No.
	)	B014012
	)	
Plaintiff and	)	(Super.Ct.
Appellant,	)	No.EAC49020)
	)	
v.	)	[COURT OF
CLAREMONT UNIVERSITY	)	APPEAL-SECOND
CENTER, CLAREMONT	)	DIST. filed
GRADUATE SCHOOL and	)	Feb 27, 1986
THE BOARD OF FELLOWS OF	)	Clay Robbins,
CLAREMONT UNIVERSITY	)	Jr., Clerk]
CENTER,	)	
	)	
Defendants and	)	
Respondents.	)	
	)	

APPEAL from an order of the Superior Court of Los Angeles County. Peter S. Smith, Judge. Affirmed.

Gordon F. Bowley, for Plaintiff and Appellant.

O'Melveny & Myers and Charles P. Diamond and Vera P. Pardee, for Defendants and Respondents.

INTRODUCTION

Plaintiff Sulaiman S. Abalkhail appeals from an order of dismissal entered after the trial court denied his petition for writ of mandate and sustained demurrers to his remaining three causes of action, alleging breach of contract, intentional infliction of emotional distress and negligent infliction of emotional distress, plaintiff thereafter failing to amend within the 30 days allowed.

STATEMENT OF FACTS

Plaintiff, a citizen of Kuwait, enrolled in Claremont Graduate School, one of six independent colleges comprising Claremont University Center, in August 1977. He completed all required courses satisfactorily in pursuit of a Ph.D. in Government and submitted a doctoral dissertation entitled "Public Enterprise and Development in Kuwait." Following the

approval and acceptance of plaintiff's dissertation, he was awarded a Ph.D in Government in 1979.

In April 1980, Abdulla M. Ali (Ali), also a citizen of Kuwait and director of the Arab Planning Institute, wrote to the president of Claremont Graduate School asserting that plaintiff's doctoral dissertation was copied from a paper written by a fellow member of the Arab Planning Institute, Dr. Muhammad T. Sadik (Sadik), entitled "Public Enterprises and Development in the Arab Countries." Ali indicated that Sadik's paper thereafter had been published in 1978 as chapter one of the book of the same title. Approximately two weeks later, Ali sent a similar letter to Abdlatif Al-Hammad (Al-Hammad), a trustee of the Arab Planning Institute and alumnus of Claremont McKenna College. Al-Hamad forwarded this letter to Claremont

Graduate School on April 22, 1980.[1]

No similar situation previously had arisen or been foreseen in the experience of Claremont Graduate School. Consequently, the Graduate School did not maintain a standing committee or rules and regulations for the investigation and determination of charges brought against its degree holders who might merit disciplinary action. After receiving the letters, the Graduate School appointed a three-member subcommittee to investigate

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1 Al-Hamad later became a member of the Board of Fellows of Claremont McKenna College, which independently governs that institution as a distinct entity entirely separate from the Claremont Graduate School. According to the governing officials of Claremont Graduate School, neither Al-Hamad nor the Claremont McKenna College Board of Fellows exerted any influence or had any hand in the ensuing investigation or resulting decision. Indeed, Al-Hamad disavowed any knowledge of the matter apart from his receipt of Ali's letter.

the charges concerning plaintiff's doctoral dissertation. The subcommittee's "investigation" consisted of a detailed comparison of plaintiff's doctoral dissersation and the first chapter of Sadik's book. Upon completing this comparison, the subcommittee conferred and concluded that approximately 75 percent of the material in the two documents was identical. Based on that conclusion, the subcommittee reported that there may have been a breach of the canons of academic honesty.

On the basis of the subcommittee's report, Paul A. Albrecht, Dean of the Graduate School, wrote to plaintiff in Kuwait on December 16, 1980. The letter states in pertinent part: "we are sad and disturbed to report that you are accused of plagiarizing substantial parts of your 1979 doctoral dissertation: Public Enterprise and

Development in Kuwait, from a document published in 1978 by the International Center for Law in Development, New York, entitled Public Enterprises and Development in the Arab Countries (Cat. No. 78-1165 copyright, 1977). According to the preface of this volume its chapters are 'based on papers presented to a Seminar on Public Enterprises and Development in the Arab Countries, held in Kuwait, March 22-25, 1976.' The seminar was cosponsored by the Arab Planning Institute and the International Legal Center (the successor organization being the International Center for Law and Development).

"In response to this charge, I appointed a faculty committee, three professors (from Government, Philosophy and Education) to review the charges. That committee has reviewed the matter and has concluded unanimously that there may

have been a breach of academic honesty.

"A formal hearing on this matter will be held in the near future to determine the validity of the charge. Evidence in your behalf may be presented in writing and/or orally by yourself and/or attorney and/or other representative. This hearing will be scheduled at a time convenient for your appearance or representation. If you do not respond to this notice, the formal hearing will be held on Monday, February 9, 1981 at 1:30 p.m. in the Treanor Room at Claremont Graduate School.

"At this hearing, the evidence presented will be recorded and a certified transcript of the proceedings provided for you. The formal hearing committee will determine the validity of these allegations and recommend to me and the graduate faculty what action should be taken. Upon receipt of these findings,

the recommended action will be referred to the graduate faculty and the Board of Trustees for final action. You will receive a final notification of that action.

"The hearing committee, after receiving all the evidence, may find that a) the allegations are not sustained, or b) sustained to a substantial degree. If the latter finding is made, your degree may be revoked by Claremont Graduate School."

Subsequently, plaintiff requested and received a delay in the proceedings of two months in order to prepare his defense. The three-member subcommittee, comprised of Professors Jordan, Louch and Drew, conducted a formal hearing on May 5 and 6, 1981. A court reporter was in attendance and prepared a complete transcript of the proceedings. Also present were an associate dean of the

Graduate School, the school's legal counsel and plaintiff.

Plaintiff was given a copy of Ali's letter of complaint and given an opportunity to explain the similarity between his dissertation and Sadik's work. He testified that he had worked for Sadik in 1975 as a researcher at the Arab Planning Institute, himself writing substantial portions of Sadik's paper; Sadik had combined plaintiff's work and that of other researchers, presenting the result to a seminar and later publishing it, without mentioning plaintiff's name as a contributor. Since the work was his own and Sadik had not mentioned plaintiff's contribution, plaintiff believed he could base his dissertation on this work without referencing Sadik's publication. According to plaintiff, Ali had made the accusation of plagiarism out of jeolousy and factionalism; Sadik, a Palestinian,

was under Ali's thumb and would say anything Ali requested.

The hearing subcommittee also received testimony from a member of plaintiff's dissertation committee and permitted plaintiff to question this witness. At this point, plaintiff was given the opportunity to ask additional questions and was invited to suggest any additional procedure he deemed necessary to ensure to a fair hearing. Plaintiff made no comments directed at the conduct of the hearing, expressing only a concern with any possible influence exerted by Al-Hammad; he was assured that Al-Hammad had no involvement in either the investigation or the decision to be made. Stating he felt he had been fairly treated, plaintiff declined to present any further evidence. In conclusion, the subcommittee members explained that they might wish to obtain additional information, given the

substantial contradictions in plaintiff's testimony and the accusations made. If further information were obtained, plaintiff would be furnished with copies of that evidence and would have an opportunity to challenge and rebut it.

At the direction of the subcommittee, legal counsel wrote to Ali on May 18, 1981, requesting additional information in possible corrobation of plaintiff's testimony. Ali responded by letter on May 30. He states that plaintiff worked for the Department of Public Administration & Industrial Management, an organization independent from the Arab Planning Institute, until 1975. The letter continues, "during the time when Mr. Sadik's paper was prepared and submitted to the Conference, [plaintiff] was not in Kuwait. He was studying in the United States from the 28th of April 1975 to the 1st of June

1977. He came to Kuwait on the 14th of June and stayed until the 20th of August 1977 and then he went back to the U.S.A. for further studies . . . . [T]he records show that he was not in Kuwait at anytime during the Conference or during the year before the Conference and he did not come after the Conference for another year."

Legal counsel again sought further information from Ali on January 31, 1982. Ali responded by telex on February 1, referencing his letter of May 30, 1981. The telex states: "[P]laintiff never worked with Mr. Sadik as research assistant or trainee . . . Our records, which leaves no doubt, shows [plaintiff] never did any research related to the topic of his dissertation or any other topic, in Arabic or English, except a paper entitled "The Growth of Public Expenditure in Kuwait" (in Arabic) which he prepared in partial fulfilment (sic) of

the requirement for the graduate diploma of Institute's course on development planning, when he was working at the Ministry of Planning in Kuwait, in June 1974.

"Furthermore, [plaintiff] joined the Department of Public Administration and Industrial Management as a research assistant in October 1974 and left for the U.S.A. for further studies in April 1975 and he never returned back to the Institute until 2 June 1979. Please be advised that the Conference on Public Enterprises and Development in the Arab Countries was held in Kuwait, March 22-23, 1976. Sadik's paper was presented to this conference in English and never being translated into any other language until this ------. Sadik prepared this paper upon request of the Institute and did the field work during the summar of 1975. . .

"I will call on you when I pass

through Los Angeles around mid-February."

The hearing subcommittee decided to meet with Ali in mid-February in the offices of legal counsel. During that meeting on February 16, the subcommittee members questioned Ali concerning the relationship between the Department of Public Administration and Industrial Management and the Arab Planning Institute, plaintiff's involvement with each organization and his employment during the relevant time periods. In addition, Ali presented the subcommittee with a memorandum detailing plaintiff's educational and employment record, which had been prepared by Dr. Abdulhadi Alawadi, assistant director of the Department of Public Administration and Industrial Management. In the interim between Ali's February 1 telex and the February 16 meeting, Ali had forwarded a copy of plaintiff's paper, "The Growth of

Public Expenditure in Kuwait."

On March 1, 1982, subcommittee member Professor A. R. Louch wrote to plaintiff, enclosing a copy of Dr. Alawadi's memorandum and summarizing Ali's additional evidence. The letter states in pertinent part: "Specifically, [Ali] denies that you worked at any time as a researcher for Mr. Sadik, or that you filed a copy of your dissertation at the Institute. The only research paper submitted by you to the Institute was "The Growth of Public Expenditure in Kuwait," as required for your diploma in Development Planning. That paper has been reviewed by the committee, and appears to be unrelated to your dissertation or the material in Mr. Sadik's paper."

Professor Louch invited plaintiff to respond, stating: "If there is any evidence you can offer to substantiate your claim to have contributed a research

paper to Mr. Sadik on Public Enterprise and Development in Kuwait, or to refute other aspects of the account of your education and employment record with the Department of Public Administration and Industrial Mangement you should get in touch with Dean Ellner as soon as possible and no later than March 22, 1982. The committee will soon complete its investigation in the matter of charges of plagiarism against you, and it is in the interst of all parties that a decision be reached as soon as possible."

Subsequently, the hearing subcommittee in the person of Professor Louch received a letter from Sadik, written March 16, 1982. Sadik states: "I deeply regret to have to inform you that [plaintiff] never worked with me directly or indirectly while I was engaged on preparing the study of Public Enterprises or any other activity. He did not serve

as my research assistant in 1975."

Since plaintiff had not responded to Professor Louch's letter of March 1, 1982, legal counsel again wrote to him on April 6. The letter warns plaintiff: "By his letter of March 1, Professor Louch invited you to respsnd to the statements made by Mr. Ali and asked that you do so on or before March 22, 1980 (sic). The Committee has construed your silence as a decision not to respond to Mr. Ali's assertions." The letter continues, informing plaintiff of the contents of Sadik's March 16 letter and concludes with yet another invitation to present a defense: "Inasmuch as the Committee intends to commence its final deliberations in this matter within the next several weeks, it is anxious to give you an unfettered opportunity to respond in writing to the statements made by both Mr. Ali and Mr. Sadik. If you would like

to take advantage of this opportunity, please send your written response to Dean Carolyn Ellner of the Graduate School within the next few weeks but in no event later than April 23, 1982. In addition, if you plan on making the submission ..., would you kindly advise me by telex on or before Friday, April 16, 1982." Plaintiff did not respond.

On April 12, after thorough deliberations, the hearing subcommittee submitted its report to the members of the Graduate Council. The report recounts and weighs the evidence in detail, concluding that the charges of plagiarism have been substantiated, and recommends that plaintiff's Ph.D in Government be revoked. The Graduate Council voted to accept the recommendation.

On May 12, 1982, plaintiff belatedly responded to the letters of March 1 and April 6, submitting a

memorandum. The hearing subcommittee reviewed the memorandum, which more or less repeated plaintiff's hearing testimony, but concluded its contents did not warrant additional deliberations or a change in the recommendation made. Following the Graduate council review, the hearing subcommittee's recommendation was accepted successively by the Graduate Faculty of the Claremont Colleges, the Claremont Graduate School Committee of the Board of Fellows and the Board of Fellows of Claremont University Center. Plaintiff's degree was revoked in October 1982; he was informed of this action by letter dated February 1, 1983. The instant action followed.

CONTENTIONS

I

Plaintiff contends the trial court erred in denying his petition for writ of mandate, in that it is established

as a matter of law that he did not receive those due process protections to which he was entitled and, hence, did not have a fair hearing.

II

Plaintiff asserts the trial court erred in sustaining the demurrer to his second cause of action for breach of contract, in that the complaint clearly alleges an actionable breach.

III

Finally, plaintiff avers the trial court erred in sustaining the demurrers to his third and fourth causes of action for intentional and negligent infliction of emotional distress, in that the complaint clearly states each cause of action.

DISCUSSION

I

Plaintiff contends the trial court erred in denying his petition for

writ of mandate, in that it is established as a matter of law that he did not receive those due process protections to which he was entitled and, hence, did not hve a fair hearing. We cannot agree.

An educational institution's decisions concerning its students are subject only to very limited judicial review. With respect to academic matters, because educators are uniquely qualified to assess the capability of students, their discretion is absolute. Accordingly, a student dismissal for academic reasons will be set aside only for an abuse of discretion, i.e., where it appears to be arbitrary, capricious or undertaken in bad faith. (Shuffer v. Board of Trustees (1977) 67 Cal.App.3d 208, 220; Wong v. Regents of the Univeristy of California (1971) 15 Cal.App.3d 823, 830, 832.) In contrast, dismissals for disciplinary reasons turn

on objective questions of fact and thus will be subject to more searching review. (Id., at page 832).

Whenever the deprivation of a significant interest is at issue, the holder of that interest is entitled to procedural fairness. (Ezekial v. Winkley (1977) 20 Cal.3d 267, 272.) The right to pursue a profession is such a significant interest (Anton v. San Antonio Community Hosp. (1977) 19 Cal.3d 802, 823; Greenhill v. Bailey (8th Cir. 1975) 519 F.2d 5, 7) and the right to pursue an education is an interest of corollary significance (Dixon v. Alabama State Board of Education (5th Cir. 1961) 294 F.2d 150, 157, cert. den. (1961) 368 U.S. 930; cf. Perlman v. Shasta Joint J. College Dist. Bd. of Trustees (1970) 9 Cal.App.3d 873). In the instant matter, defendants sought to deprive plaintiff of the fruits of his education, i.e., his degree. That is a vital

interest connnected with the pursuit of one' livelihood (Dixon, supra, 294 F.2d at p. 157); hence, plaintiff was entitled to procedural fairness prior to the revocation of his degree.

However, he was not -- as he claims -- entitled to full-blown procedural due process. Rather, he was entitled only to the minimum requisites of procedural fairness, to be provided with "adequate notice of charges and a 'fair opportunity . . . to present his position.'" (Anton v. San Antonio Community Hosp., supra, 19 Cal.3d at p. 830.) This entails neither "formal proceedings with all the embellishments of a court trial . . . nor adherence to a single mode of process." (Pinsker v. Pacific Coast Society of Orthodontists, (1974) 12 Cal.3d 541, 555.) Indeed, the courts have recognized "the practical limitations on the ability of private

institutions to provide for the full ariving of disputed factual issues." (Ezekial v. Winkley, supra, 20 Cal.3d at p. 278.)

Plaintiff asserts he was denied procedural fairness in the following respects: (1) defendants failed to provide adequate notice of the charges; (2) plaintiff was not permitted to confront and cross-examine all adverse witnesses; (3) the committee which initially investigated whether further consideration should be given to the charge was the same committee which ultimately held a hearing and rendered factual determinations, thereby denying plaintiff a fair hearing; and (4) defendants improperly yielded to outside influences. Whether a hearing comports with the standards of procedural fairness is a question of fact. (Western Air Lines, Inc. v. Schutzbank (1968) 258

Cal.App.2d 218, 226; see also Code Civ. Proc., § 1094.5 subd. (c).) Hence, on appeal, the trial court's determination must be upheld if supported by substantial evidence. (Moran v. Board of Medical Examiners (1948) 32 Cal.2d 301, 308.) In assessing the sufficiency of the evidence, a reviewing court must view the evidence in the light most favorable to the trial court's judgment, indulging every legitimate inference necessary thereto. (Golde v. Fox (1979) 98 Cal.App.3d 167, 174.)

What procedure will afford a party a fair hearing is determined by the facts and circumstances presented. (Anton v. San Antonio Community Hosp., supra, 19 Cal.3d at p. 829.) At a minimum, a fair hearing requires adequate notice of the charges, a reasonable opportunity to respond and an impartial hearing panel. (Miller v. National Medical Hospital

(1981) 124 Cal.App.3d 81, 90.) However, since private entities such as defendants have no subpoena power, procedural fairness does not encompass the right to confront and cross-examine adverse witnesses unless, of course, those witnesses testify at a hearing which the subject of the inquiry attends. (Anton, supra, 19 Cal.3d at pp., 815-816, fn. 12.) Moreover, the hearing body is prohibited from considering ex parte communications only when the affected party is unaware of their contents and has no opportunity to respond. (Ibid).

Plaintiff claims the notice provided to him was deficient, in that it did not include the names of his accusers and thus prevented him from gathering evidence pertinent to his defense prior to the hearing. Adequate notice of the charges includes the specific accusation made and a statement of the consequences

which may follow if the charges are found true. (Id., at p. 816, fn.12; Dixon v. Alabama State Board of Education, supra, 294 F.2d at p. 158.) There is no requirement that notice include the names of adverse witnesses. It is sufficient if, at the hearing, the affected party is informed of the names and evidence of nonappearing witnesses and afforded an opportunity to respond to the facts thus presented. (Id., at p. 159.)

Plaintiff was provided with detailed information concerning the publication he was accused of plagiarizing in preparing his doctoral dissertation, including the author, title and publication date. In addition, he was told the nature of the hearing to be held, given a proposed date, invited to present evidence, made aware he could seek the assistance of and have an attorney present at the hearing, told the composition of

the hearing committee and informed of the likely consequence tht his degree would be revoked if the committee found the charges to be true.

It is obvious plaintiff not only had adequate notice of the charges and possible consequences, but also of the general procedure to be followed in determining the issue and his basic rights. Indeed, plaintiff evinced his understanding of this by requesting and obtaining a substantial continuance of the hearing date in order to prepare his defense. The notice provided plaintiff exceeds the minimum requirements of fair procedure; hence, he was not denied a fair hearing on this ground.

Plaintiff also complains he was not permitted to confront and cross-examine all adverse witnesses. As noted ante, private institutions such as defendants have no subpoena power;

consequently, procedural fairness does not per se include the right to confront and cross-examine adverse witnesses. (Anton v. San Antonio Community Hosp., supra, 19 Cal.3d at pp. 815-816, fn. 12.) In the instant matter, the complaining witnesses were citizens of Kuwait who were not present in the United States during the initial investigation of the charges or at the time of plaintiff's hearing. He was given their names and provided with the evidence they had submitted to the hearing subcommittee. In the circumstances, procedural fairness required no more.

At the conclusion of two days of hearing, during which plaintiff did cross-examine the sole witness other than himself who testified before the subcommittee, the subcommittee informed plaintiff there was a sufficient conflict in the evidence to prompt further investigation. He knew the subcommittee

would be seeking additional evidence from the complaining witnesses and he was invited to submit further evidence in his defense. Approximately nine months later, counsel for the subcommittee learned one of the witnesses, Ali, would be in the United States in less than two weeks and desired to meet with the subcommittee. At the time, plaintiff was in Bahrain. The subcommittee did meet with Ali, questioning him in detail concerning aspects of plaintiff's defense. Thereafter, the committee informed plaintiff of the evidence given by Ali and forwarded a copy of a memorandum which Ali had submitted as evidence; plaintiff was invited to respond.

Given the time constraints and the distances involved, the dictates of fair procedure required no more. While the subcommittee received Ali's evidence ex parte, plaintiff was informed of its

contents and had every opportunity to respond. Accordingly, the procedure employed was not repugnant to the concept of fair procedure. (Anton, supra, 19 Cal.3d at pp. 815-816, fn. 12.)

Plaintiff argues that the initial investigation of the charges against him by the same subcommittee which ultimately held a hearing and rendered a factual determination denied him a fair hearing. An impartial adjudicatory panel is integral to a fair hearing. (Miller v. National Medical Hospital, supra, 124 Cal.App.3d at p. 90.) However, the combining of investigatory and adjudicatory functions does not necessarily violate concepts of fair procedure. (Applebaum v. Board of Directors (1980) 104 Cal.App.3d 648, 658.) The affected party has been denied a fair hearing only if "the facts of a case show foreclosure of fairness as a

practical or legal matter." (Ibid.)

In Applebaum, the court held the affected party had been denied a fair hearing where there not only was an overlap of investigatory and adjudicatory functions, but the complaining party was a member of both bodies and members of the adjudicatory body also were members of the reviewing body. In addition, the complaining party was one of only two persons involved in this process who had expertise in the area of investigation. (Id. at p. 659.)

It is also noteworthy that the investigation in Applebaum included the taking of testimony and the gathering of expert opinion. In contrast, the only "investigation" undertaken in the instant matter was the examination of plaintiff's doctoral dissertation and comparison with the purportedly plagiarized document to ascertain whether there were enough

similarities to pursue the matter further. No evidence was taken until the subcommittee convened a hearing. At that time, the members received testimony concerning the process by which plaintiff's dissertation was approved and his explanation of the similarities and his asserted right to use the material without attribution. Further, once the hearing committee reached a decision, it made a recommendation to a full adjudicatory board which included no member of the hearing committee. In these circumstances, the small overlap of function had no tendency to foreclose fairness either as a practical or as a legal matter. Accordingly, plaintiff was not thereby denied a fair hearing. (Applebaum, supra, 104 Cal.App.3d at p. 658.)

Finally, plaintiff urges that defendants improperly yielded to outside

pressures from Al-Hamad in reaching their decision. While plaintiff presents evidence in the form of his declaration that this is so, there is ample evidence to the contrary. The trial court's conclusion that plaintiff received a fair hearing implies a finding that defendants reached their decision free from improper outside influences. Inasmuch as the record contains substantial evidence to support such a finding, this court is bound by it on appeal. (Golde v. Fox, supra, 98 Cal.App.3d at p. 174.) In sum, it is abundantly clear the trial court's conclusion plaintiff received a fair hearing is well-founded.

II

Plaintiff asserts the trial court erred in sustaining the demrurrer to his second cause of action for breach of contarct, in that the complaint clearly alleges an actionable breach. The

assertion lacks merit.

Since even the decisions of an educational institution as to academic fitness must not be arbitrary, capricious or undertaken in bad faith (Shuffer v. Board of Trustees, supra, 67 Cal.App.3d 208, 220), it is clear that a covenant of good faith and fair dealing is implied in the educator-student relationship. There is no authority suggesting a party may not state a claim for the breach of this convenant.

Doubtlessly, plaintiff's second cause of action adequately alleges on its face the existence of a contractual relationship and its breach by the revocation of his doctoral degree without first affording him a fair hearing. However, the merits of his petition for writ of mandate were considered and decided before the demurrer was considered. In denying the petition, the

trial court specifically found plaintiff had received a fair hearing.

Although sufficient on its face, a complaint nonetheless will be subject to demurrer if it appears defective by reference to facts which may be judicially noticed. (Childs v. State of California (1983) 144 Cal.App.3d 155, 159.) A court may take judicial notice of any court records, including its own records in a particular matter. (In re Tanya F. (1980) 111 Cal.App.3d 436, 440; Mason v. Drug, Inc. (1939) 31 Cal.App.2s 697, 701.) A court's power of judicial notice extends to the truth of facts asserted in findings of fact, orders and judgments. (In re Tanya F.., supra, 111 Cal.App.3d at p. 440; Day v. Sharp (1975) 50 Cal.App.3d 904, 914.) Once judicial notice is taken of the finding plaintiff received a fair hearing, included in the order denying the petition for writ of mandate, the second

cause of action becomes defective; it no longer adequately alleges the breach of any contractual relationship.

III

Finally, plaintiff avers the trial court erred in sustaining the demurrers of his third and fourth causes of action for intentional and negligent infliction of emotional distress, in that the complaint clearly states each cause of action. Again, we perceive no merit in the averment.

Plaintiff's third and fourth causes of action suffer from the same defect as his second cause of action. While each adequately alleges either the intentional or the negligent infliction of emotional distress on its face, each asserts the act resulting in emotional distress in the revocation of plaintiff's doctoral degree without first affording him a fair hearing. Again, once judicial

notice is taken of the finding he received a fair hearing, the third and fourth causes of action no longer adequately allege any act amounting to outrageous conduct or actionable negligence. Accordingly, the trial court correctly sustained the demurrer to these causes of action as well as to the second cause of action.

The order is affirmed.

SPENCER, P.J.

We concur:

HANSON (L. Thaxton), J.

PITTS, J.*

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*Assigned by the Chairperson of the Judicial Council.

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SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

SULAIMAN S. ABALKHAIL Plaintiff(s) vs CLAREMONT UNIVERSITY CENTER, ETC., ET AL Defendant(s)	CASE NUMBER EA C 49020 **NOTICE OF FILING ORDER OF DISMISSAL**

To the above named parties and to their attorneys of record:

You are hereby notified that:

Order of dismissal in the above-entitled matter was filed on APRIL 2, 1985

FRANK S. ZOLIN, County Clerk
and Clerk of the Superior
Court of California County
of Los Angeles.

By: /s/ Deputy.

CERTIFICATE OF MAILING

I, Frank S. Zolin, County Clerk and Clerk of the Superior Court of California, County of Los Angeles, and not a party to the within action, hereby certify; that on April 2, 1985, I served the within notice on the parties in the within action, by depositing true copies thereof, enclosed in sealed envelopes with postage thereon fully prepaid in the United Staes Post Office mail box in Los Angeles County, California addressed as follows:

Gordon F. Bowley, Inc.
800 H Street, Suite 200
Sacramento, CA 95814

O'Melveny & Meyers
400 South Hope Street
Los Angeles, CA 90071

Dated: April 2, 1985

FRANK S. ZOLIN, County Clerk and Clerk of the Superior Court of California County of Los Angeles.

By: /s/ Deputy.

NOTICE OF: ENTRY OF JUDGMENT/FILING OF ORDER OF DISMISSAL

PROOF OF SERVICE

I am a citizen of the United States and employed in Sacramento County, State of California; I am over the age of eighteen (18) years and not a party to the within action; my business address is 800 H Street, Suite 200, Sacramento, California 95814; on this date I served:

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mail box at Sacramento, California, addressed as set forth below:

Charles P. Diamond, Esq.
O'MELVENY & MEYERS
400 South Hope Street
Los Angeles, California 90071

I declare under penalty of perjury that the foregoing is true and correct.

Executed August 4, 1986, at Sacramento, California.

By: Doralyn McPeake
Doralyn McPeake